

IN THE FIJI COURT OF APPEAL

Criminal Appeal Nos. 36 and 73 of 1987

Between:

JIUTA LUMUNI
APISAI TUITAGALOA

Appellants

- and -

STATE

Respondent

Both Appellants in person
Mr. I. Mataitoga for the Respondent

Date of Hearing: 5 May 1988

Date of Judgment: 9 May 1988

JUDGMENT OF THE COURT

The first named appellant Jiuta Lumuni was accused No. 3 in Supreme Court (now High Court) Criminal Case No. 36/87 and the second named appellant Apisai Tuitagaloa was accused No. 4 in the same case. They were charged with a number of offences along with other accused persons. Both appellants have appealed against sentence only.

re : Jiuta Lumuni (Criminal Appeal No. 36/87)

We shall deal with the first appellant's appeal first. He had pleaded guilty to 3 counts of larceny of cattle and 1 count of corruptly taking reward. He was sentenced as follows:

- Count 1 - Larceny of Cattle - 1 year
- Count 2 - Corruptly Taking Reward - 6 months
- Count 3 - Larceny of Cattle - 1 year
- Count 7 - Larceny of Cattle - 1 year

As the sentences were consecutive the appellant received 3½ years imprisonment in all. At the time of his sentence he was serving a 2-year sentence for cattle stealing. Furthermore, his long list of previous convictions includes 2 for larceny, 3 for damaging property and 1 for robbery with violence.

In his grounds of appeal the appellant had complained that the sentence was harsh and excessive and that some of his co-accused received lighter sentences. At the hearing of this appeal the appellant made a plea for leniency and produced a written submission in which he outlined how his cane farm was in neglect and that his wife and children were also suffering as a consequence of his imprisonment.

Mr. I. Mataitoga the Acting Director of Public Prosecutions rightly pointed out to us:-

- (a) that the appellant had committed 3 separate offences of larceny of cattle over a period of 2 weeks only;
- (b) that the value of the cattle stolen was large, i.e. \$2,500;
- (c) that although the law provides a maximum of 14 years for cattle stealing the appellant was only given a one year sentence in respect of each of the cattle stealing charges; and
- (d) that for corruptly taking a reward the punishment imposed was only 6 months whereas the maximum provided by law was 7 years.

Furthermore, he voiced the concerns of the cane farmers for some of whom a pair of bullocks is a vital means of their livelihood.

It is true that some of this appellant's accomplices received lighter sentences but in our opinion the trial judge, Dyke J., was justified in his approach when he said:-

"Accused 2 and Accused 5 appear to have had more minor roles and clearer records so their sentences will be lighter."

We quote with approval the following statement in ARCHBOLD (42nd Ed.) on Disparity of Sentence at pages 859 - 860:-

"One of the most important principles of sentencing is that there should be justice as between co-defendants which requires that any difference in the sentences imposed on co-defendants should be reflected in their different degrees of culpability in the offence and in their character and background. See R. v. Richards (1955) 39 Cr. App. R. 191; R. v. Pitson (1972) Cr. App. R. 391."

We are of the opinion that the total sentence of 3½ years for the 4 offences committed was far from being harsh and excessive. It was in our view on the lenient side. We must bear in mind the prevalence of cattle stealing in cane farming areas and the serious effects the crime has on the victims and their families. Whilst we sympathise with the distress that the appellant's family must be suffering such suffering is a direct consequence of the appellant's own criminal conduct, and can not be considered a mitigating factor.

The public is entitled to expect deterrent custodial sentences to be imposed on persistent offenders in such cases.

We therefore have no hesitation in dismissing this appeal against sentence.

re : Apisai Tuitagaloa (Criminal Appeal No. 37/87)

On a plea of guilty this appellant was sentenced to a total of 2½ years imprisonment made up as follows:-

- Count 1 - Larceny of Cattle - 1 year
- Count 2 - Corruptly Taking Bribe - 6 months
- Count 7 - Larceny of Cattle - 1 year

The appellant asks for leniency because he is the only breadwinner in the family. He says he has aged parents dependant on him. Although he has only 2 previous convictions, we note that one of them was for robbery with violence.

In sentencing the accused persons the trial judge observed that there 'has been a series of cases from this area involving the theft of cattle and them being sold to the owners. Clearly there has been a racket of considerable proportions'.

For reasons which we expressed when considering the first appellant's plea for leniency due to the suffering of his family the suffering of the second appellant's aged parents can not be accepted as a ground for reducing the sentence.

We are unable to find any merit against sentence in this appeal which is accordingly dismissed.

T. Tuiwaga

 President, Fiji Court of Appeal

R. Williams

 Justice of Appeal

M. L. Lian

 Justice of Appeal